No. 14,394

IN THE

United States Court of Appeals

For the Ninth Circuit

WILLIAM RADOVICH,

Appellant,

vs.

NATIONAL FOOTBALL LEAGUE, et al.,

Appellees.

BRIEF OF APPELLEES J. RUFUS KLAWANS AND PACIFIC COAST FOOTBALL LEAGUE.

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PRELIMINARY STATEMENT.

The action was commenced by William Radovich in the District Court of the United States for the Northern District of California, Southern Division, claiming treble damages under the provisions of the Sherman Act. Motion to dismiss the complaint was made upon the grounds:

1. That the complaint indicates a lack of jurisdiction in the Court over the subject matter.

2. That the complaint fails to state a claim upon which relief can be granted.

The Honorable George B. Harris made an order granting the motion to dismiss.

The conspiracy charged in plaintiff's complaint involved the National Football League and some of its member teams, as well as these appellees, the Pacific Coast Football League and J. Rufus Klawans.

The basic issues involved in this appeal are substantially the same as to all appellees. A brief has already been filed by appellees National Football League, Chicago Cardinals Football Club, Inc., New York Football Giants Club, Inc., Chicago Bears Football Club, Inc., Detroit Football Company and Los Angeles Rams Football Club.

In the interest of brevity, these appellees hereby adopt the legal arguments contained in the brief of the foregoing appellees, rather than again setting them forth in this brief.

However, as the appellee J. Rufus Klawans was the Commissioner of the Pacific Coast Football League and never associated in any way with the appellee National Football League, nor with any of its member teams, these appellees submit the following legal arguments in addition to those adopted from the briefs of the other appellees.

THE CONTENTIONS OF THESE APPELLEES.

The order of the District Court dismissing plaintiff's complaint was proper because

(a) The complaint failed to allege a cause of action under the provisions of the Sherman Act because it did not contain facts showing an un-

reasonable restraint of interstate activities constituting trade or commerce within the meaning of the Act.

(b) Even if it be assumed that such an unreasonable restraint was shown in the complaint, it failed to allege a cause of action under the provisions of the Sherman Act because it did not allege facts showing that a substantial detriment to the public resulted therefrom.

(c) The complaint failed to allege facts showing that the acts of the appellees alleged to be in violation of the Sherman Act caused or resulted in the damage claimed by plaintiff.

ARGUMENT.

1. PROFESSIONAL FOOTBALL IS NOT TRADE OR COMMERCE WITHIN THE MEANING OF THE SHERMAN ACT.

Although the common law had some influence in the enactment of the Sherman Act, the question of whether the acts complained of are within the scope of the Act is a matter of purely statutory construction.

Shotkin v. General Electric Co., 171 Fed. (2d) 236.

The Sherman Act is limited to combinations, agreements or concerts which tend to prejudice the public interest by unduly restricting competition or unduly obstructing the due course of trade, or which because

of their evident purpose or inherent nature injuriously restrain trade in competitive markets.

Wilder Manufacturing Co. v. Corn Products Refining Co., 236 U.S. 165, 59 L.Ed. 520.

Not all restraints of trade are penalized under the Sherman Act; an injury to plaintiff alone is not sufficient; public interest must be injuriously affected to an appreciable degree.

Shotkin v. General Electric Co., supra.

The business of giving exhibitions of baseball are purely state affairs.

Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200;

Toolson v. New York Yankees, 346 U.S. 356.

The pattern of giving exhibitions of professional football is identical with that of professional baseball. Accordingly, the rulings in the "Federal" case and "Toolson" case, above cited, are clearly applicable to the "sport" here involved, to-wit: the business of giving exhibitions of professional football.

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2. PLAINTIFF'S COMPLAINT FAILS TO SHOW ANY SUBSTANTIAL DETRIMENT TO THE PUBLIC.

The many cases cited in the brief filed by the other appellees herein clearly establish that injury to a plaintiff alone is not sufficient; there is no remedy under the Sherman Act unless the alleged restraint does appreciable harm to the general public in the form of undue restriction of trade or commerce.

Here the plaintiff seeks only to show that the acts of the appellees barred him from playing professional football in the particular leagues involved in the alleged conspiracy.

This is neither an allegation that interstate commerce has been affected, nor that the general public has been injuriously affected to any extent, much less a substantial degree.

As pointed out in the brief of the other appellees, plaintiff was not even employed in an industry which was unquestionably engaged in interstate commerce.

Under such circumstances, plaintiff's complaint fails to allege facts supporting this basic essential to a cause of action.

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3. THE ALLEGED WRONGFUL ACTS OF APPELLEES DID NOT CAUSE THE DAMAGE OF WHICH PLAINTIFF COMPLAINS.

The complaint of appellant does not allege any restriction or restraint of competition, except as to the particular leagues and teams involved. While the acts complained of might have had a restriction upon plaintiff's right to play professional football to this limited extent, there is nothing in plaintiff's complaint to show that there was any impact on professional football or any lessening of competition in this field. Nothing in the complaint indicates that he was not free to offer his serivces to the many teams and leagues available.

The substance of his complaint is that he was precluded from employment by a small segment of teams

engaging in the business of giving football exhibitions, after he had breached a contract with a member team of appellee National Football League. He now claims that this injuriously affected the public to an appreciable degree and created a restraint of trade in interstate commerce within the purview of the Sherman Act.

The mere statement of the proposition contains its own answer.

CONCLUSION.

For the many reasons aforesaid, and under the legal authorities herein stated and set forth in the brief of the other appellees, it is respectfully submitted that the order of the Honorable District Court dismissing plaintiff's complaint should be affirmed.

Dated, San Francisco, California,
February 23, 1955.

J. Bruce Fratis,
Attorney for Appellees
Pacific Coast Football League
and J. Rufus Klawans.